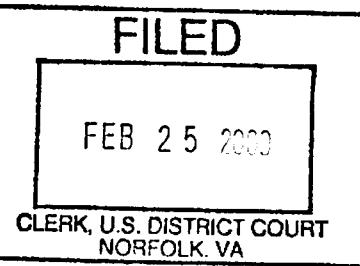


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

KEITH SAMPSON, #370298,



Petitioner,

v.

2:08CV125

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on February 20, 2007, in the Circuit Court for the City of Norfolk, Virginia, for unlawful wounding. As a result of the conviction, petitioner was sentenced to serve two years and six months in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on January 13, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on February 3, 2009, objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the

findings and recommendations set forth in the Report of the United States Magistrate Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis of petitioner's procedural defaults in the state system and on the merits and that judgment be entered in respondent's favor.

To the extent that petitioner objects to the Magistrate Judge's findings and conclusions, the objections are without merit. First, Claims 1 and 2 of the petition (indictment based on false testimony and insufficient evidence) were raised on direct appeal and rejected by the Virginia Court of Appeals, based upon a review of the entire record. The decision of the Court of Appeals was not contrary to or an unreasonable application of federal law, nor are the findings based upon an reasonable determination of facts.

Second, Claim 4 (illegal sentence) appears to have merit until the trial transcript is carefully reviewed. At the close of the sentencing proceeding, and after asking petitioner if he had anything to say, the trial court said: "I'm going to impose a sentence of two years and six months. I'm going to sentence you to an additional three years and suspend that on the condition of your being on three years post-release supervision on your release from custody." (2/9/07 Tr. at 13-14.) Defense counsel then asked, "[i]s the sentence two years and six months with three years of post-release, Judge," to which the court replied, "[t]hat's correct." (2/9/07 at 14.) The sentencing order conforms to the pronounced sentence of two years and six months to serve, followed by three years of supervised release. Accordingly, petitioner's sentence is lawful.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

/s/

Rebecca Beach Smith

United States District Judge



**UNITED STATES DISTRICT JUDGE**

Norfolk, Virginia

February 24, 2009